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KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.  
1301 K STREET N.W., SUITE 1000 WEST  
WASHINGTON, DC 20006  
(202) 326-7900

CRESTAR BANK N.A.  
WASHINGTON, DC  
15-62/540

19711<sup>5</sup>

Received

SEP 4 2000  
Common Carrier Bureau  
Network Services Division  
Office of the Chief

8/15/00  
Received

AMOUNT  
\$780.00

Seven Hundred Eighty Dollars And 00 Cents

SEP 6 2000

ORDER  
OF

Federal Communications  
Commission

Common Carrier Bureau  
Network Services Division  
Office of the Chief

*[Signature]*  
AUTHORIZED SIGNATURE

⑈019711⑈ ⑆054000522⑆ 206582714⑈

⑈0000078000⑈

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

00-157

READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDINGFEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICEApproved by OMB  
3060-0589  
Page No. 1 of 2(1) LOCKBOX #  
358145

SPECIAL USE

FCC USE ONLY

## SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)

K e l l o g g H u b e r H a n s e n T o d d E v a n s

(3) TOTAL AMOUNT PAID (U.S. Dollars and cents)

\$ 7 8 0 . 0 0

(4) STREET ADDRESS LINE NO. 1

1 3 0 1 K S t r e e t N W

(5) STREET ADDRESS LINE NO. 2

S u i t e 1 0 0 0 - W e s t

(6) CITY

W a s h i n g t o n

(7) STATE

D C

(8) ZIP CODE

2 0 0 0 5

(9) DAYTIME TELEPHONE NUMBER (include area code)

202 3 2 6 - 7 9 0 0

(10) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN)

TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(11) PAYER (FRN)

0 0 0 3 - 7 3 2 1 - 0 4

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B  
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

(13) APPLICANT NAME

V e r i z o n C o m m u n i c a t i o n s

(14) STREET ADDRESS LINE NO. 1

1 3 2 0 N o r t h C o u r t H o u s e R o a d

(15) STREET ADDRESS LINE NO. 2

E i g h t h F l o o r

(16) CITY

A r l i n g t o n

(17) STATE

V A

(18) ZIP CODE

2 2 2 0 1

(19) DAYTIME TELEPHONE NUMBER (include area code)

703 9 7 4 - 2 9 4 4

(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN)

TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(21) APPLICANT (FRN)

0 0 0 3 - 7 0 8 5 - 0 0

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID

(24A) PAYMENT TYPE CODE

C U T

(25A) QUANTITY

1

(26A) FEE DUE FOR (PTC)

\$ 7 8 0 . 0 0

(27A) TOTAL FEE

\$ 7 8 0 . 0 0

FCC USE ONLY

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FCC USE ONLY

(28B) FCC CODE 1

(29B) FCC CODE 2

## SECTION D - CERTIFICATION

(30) CERTIFICATION STATEMENT

I, Evan T. Leo

the best of my knowledge, information and belief.

I, certify under penalty of perjury that the foregoing and supporting information is true and correct to  
SIGNATURE *Evan T. Leo* DATE 8/24/00

## SECTION E - CREDIT CARD PAYMENT INFORMATION

(31)

☐

MASTERCARD

MASTERCARD/VISA ACCOUNT NUMBER:

EXPIRATION

DATE:

☐

VISA

I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described.

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

REMITTANCE ADVICE (Continuation Sheet)

FEDERAL COMMUNICATIONS COMMISSION

Approved by OMB

3060-0589

Page No 2 of 2

SPECIAL USE
FCC USE ONLY

USE THIS SECTION ONLY FOR EACH ADDITIONAL APPLICANT

SECTION BB - ADDITIONAL APPLICANT INFORMATION

(13) APPLICANT NAME

N o r t h P o i n t C o m m u n i c a t i o n s , I n c .

(14) STREET ADDRESS LINE NO. 1

3 0 3 S e c o n d S t .

(15) STREET ADDRESS LINE NO. 2

(16) CITY

S a n F r a n c i s c o

(17) STATE

C A

(18) ZIP CODE

9 4 1 0 7

(19) DAYTIME TELEPHONE NUMBER (include area code)

4 1 5 4 0 3 - 4 0 0 3

(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(21) APPLICANT (FRN)

0 0 0 3 - 7 3 3 7 - 6 3

(22) APPLICANT (TIN)

9 4 3 2 7 0 2 6 0

IF MORE BOXES ARE NEEDED, USE ADDITIONAL FCC 159-C CONTINUATION SHEETS TO LIST EACH SERVICE

SECTION CC - PAYMENT INFORMATION

(23A) CALL SIGN/OTHER ID

(24A) PAYMENT TYPE CODE

(25A) QUANTITY

(26A) FEE DUE FOR (PTC)

(27A) TOTAL FEE

FCC USE ONLY

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FCC USE ONLY

(28B) FCC CODE 1

(29B) FCC CODE 2

(23C) CALL SIGN/OTHER ID

(24C) PAYMENT TYPE CODE

(25C) QUANTITY

(26C) FEE DUE FOR (PTC)

(27C) TOTAL FEE

FCC USE ONLY

(28C) FCC CODE 1

(29C) FCC CODE 2

(23D) CALL SIGN/OTHER ID

(24D) PAYMENT TYPE CODE

(25D) QUANTITY

(26D) FEE DUE FOR (PTC)

(27D) TOTAL FEE

FCC USE ONLY

(28D) FCC CODE 1

(29D) FCC CODE 2

(23E) CALL SIGN/OTHER ID

(24E) PAYMENT TYPE CODE

(25E) QUANTITY

(26E) FEE DUE FOR (PTC)

(27E) TOTAL FEE

FCC USE ONLY

(28E) FCC CODE 1

(29E) FCC CODE 2

(23F) CALL SIGN/OTHER ID

(24F) PAYMENT TYPE CODE

(25F) QUANTITY

(26F) FEE DUE FOR (PTC)

(27F) TOTAL FEE

FCC USE ONLY

(28F) FCC CODE 1

(29F) FCC CODE 2

VENDOR I.D.	NAME	PAYMENT NUMBER	CHECK DATE				
FED0003	Federal Communications	00000012153	8/15/00	19711			
OUR VOUCHER NUMBER	YOUR VOUCHER NUMBER	DATE	AMOUNT	AMOUNT PAID	DISCOUNT	WRITE-OFF	NET
8/15/00 E. LEO	8/15/00		\$780.00	\$780.00	\$0.00		\$780.00
			\$780.00	\$780.00	\$0.00		\$780.00

COMMENT

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

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SUITE 1000 WEST

WASHINGTON, D.C. 20005-3317

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HENK BRANDS  
SEAN A. LEV  
COURTNEY SIMMONS ELWOOD  
EVAN T. LEO

August 24, 2000

Via Hand Delivery

Processor  
Federal Communications Commission  
Common Carrier Domestic Services  
P.O. Box 358145  
Pittsburgh, PA 15251-5145

Re: Joint Application of NorthPoint Communications, Inc. and Verizon  
Communications for Authority Pursuant to Section 214 of the  
Communications Act of 1934, as Amended, To Transfer Control of  
Blanket Authorization To Provide Domestic Interstate  
Telecommunications Services as a Non-Dominant Carrier,  
CC Docket No. 00-157

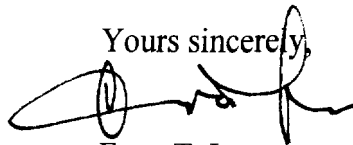
Dear Processor:

Enclosed please find an original and six copies of the Application for Transfer of Control in the above-referenced proceeding. Please date stamp the extra copy of the Application and return it in the enclosed self-addressed, stamped envelope.

I have also enclosed a check in the amount of \$780.00 payable to the Federal Communications Commission to cover the filing fee for this Application.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me at (202) 326-7930.

Yours sincerely,



Evan T. Leo

Enclosure

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Joint Application of NorthPoint  
Communications, Inc. and Verizon  
Communications for Authority Pursuant to  
Section 214 of the Communications Act of  
1934, as Amended, To Transfer Control of  
Blanket Authorization To Provide Domestic  
Interstate Telecommunications Services as a  
Non-Dominant Carrier

CC Docket No. \_\_\_\_\_

**APPLICATION FOR TRANSFER OF CONTROL**

***ORIGINAL***

August 24 2000

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Joint Application of NorthPoint  
Communications, Inc. and Verizon  
Communications for Authority Pursuant to  
Section 214 of the Communications Act of  
1934, as Amended, To Transfer Control of  
Blanket Authorization To Provide Domestic  
Interstate Telecommunications Services as a  
Non-Dominant Carrier

CC Docket No. \_\_\_\_\_

**APPLICATION FOR TRANSFER OF CONTROL**

NorthPoint Communications, Inc. (NorthPoint) and Verizon Communications (Verizon) hereby request authority to transfer control of NorthPoint's blanket section 214 authorization to provide domestic interstate telecommunications services as a non-dominant carrier to a "new" NorthPoint that combines their respective digital subscriber line businesses in a new non-dominant carrier.

The requested transfer will strongly promote the public interest. First, the underlying transaction will enable the new NorthPoint to deploy broadband access services aggressively to the mass market nationwide, including in the service territories of the other regional Bell companies, and to compete effectively against the closed cable systems who today control approximately three-quarters of the residential broadband access business. Second, it will give the new NorthPoint the scale necessary to attract the new forms of content it needs to challenge cable's dominance of the video delivery business, which is even greater than its dominance of the residential broadband access business. Third, it will combine the xDSL businesses of NorthPoint and Verizon in a new "most separate" affiliate. Finally, it will deliver these benefits



with no realistic risk of countervailing competitive harm in any segment of the telecommunications marketplace.

## **I. DESCRIPTION OF THE PARTIES.**

NorthPoint is a competitive local exchange carrier that primarily provides Symmetric DSL (“SDSL”) services for use by small- and medium-sized businesses. NorthPoint provides these services on a wholesale basis to other firms, primarily Internet service providers, who in turn offer them to end-users, primarily small- and medium-sized businesses. NorthPoint is headquartered in San Francisco, California, and is certified to provide service in 40 states.

Verizon is an incumbent local exchange carrier that also provides wireless services, various information services, and long distance service originating in New York and other states outside of the former Bell Atlantic region. Within its local exchange territory, Verizon provides Asymmetric DSL (“ADSL”) services primarily to residential customers. Verizon is headquartered in New York, New York.

## **II. DESCRIPTION OF THE TRANSACTION.**

NorthPoint and Verizon have decided to combine their complementary xDSL businesses in a new corporate entity that will offer a broader range of services, across a broader geographic footprint, than either company could provide on its own.<sup>1</sup> Verizon will also make a net cash investment of \$450 million in the new entity, which will allow the new company to accelerate its

---

<sup>1</sup>Specifically, a wholly owned indirect subsidiary of Verizon will merge with and into the current NorthPoint. Existing NorthPoint shareholders will receive a combination of cash and new NorthPoint stock in exchange for their current NorthPoint shares. Verizon will contribute its wholesale DSL business and cash to the new NorthPoint. As a result of these transactions, Verizon will hold 55 percent of the voting securities of the new NorthPoint and the stockholders of the current NorthPoint will hold the remaining 45 percent of the voting securities. Attachment 3 discusses the transaction in greater detail.

roll out of broadband access services to all segments of the mass market, and to do so across the new company's larger national footprint.

The new NorthPoint will become a "most separate" affiliate of Verizon that is more independent than necessary to satisfy any regulatory requirement. First, the new company will have substantial independent ownership. As noted above, Verizon will own 55 percent of the new NorthPoint, with the remaining 45 percent held by independent shareholders. Second, the new NorthPoint will have a board that includes independent directors and a management team led by the current NorthPoint. Verizon will nominate six directors, three of whom must be NASDAQ-qualified "independent" directors, and NorthPoint will appoint three directors. NorthPoint's current CEO will remain in charge of the new company. Third, the new company will maintain the NorthPoint identity, retaining the "NorthPoint" name and brand, and keeping the company's headquarters in San Francisco.

### **III. DESCRIPTION OF LICENSES TO BE TRANSFERRED.**

This transaction involves the transfer of only one Commission license: the transfer of NorthPoint's blanket section 214 authorization to provide domestic interstate telecommunications services as a non-dominant carrier to a "new" NorthPoint that will also operate as a non-dominant carrier pursuant to a blanket section 214 authorization. *See* 47 C.F.R. § 63.01(a); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, 85 FCC2d 1, 10, 20-21 (1980). NorthPoint does not hold any international section 214 authorizations, or any Title III licenses. Moreover, the transfer of Verizon's xDSL assets into the new NorthPoint, in which Verizon will own a majority stake, does not constitute a transfer of control.

#### **IV. DESCRIPTION OF PUBLIC INTEREST BENEFITS.**

As described in detail in the accompanying public interest statement, this transaction advances two core goals of the Telecommunications Act of 1996 — promoting competition in all segments of the communications marketplace, and promoting the rapid deployment of advanced telecommunications capability.

#### **V. REQUEST FOR EXPEDITED APPROVAL.**

The Commission should rapidly approve this transaction. NorthPoint needs significant additional financing in order to implement its current business plan. Without the injection of new capital, NorthPoint could be forced to scale back its current operations, and to scrap its expansion plans. Moreover, unless this new financing is provided quickly, NorthPoint and Verizon will fall even further behind cable operators in the provision of broadband access services to mass market customers, which will deny consumers the benefits of competition.

#### **VI. INFORMATION PROVIDED PURSUANT TO THE COMMISSION'S RULES.**

Applicants submit the following information for the transfer of control:

(a) Names, addresses, and telephone numbers of NorthPoint and Verizon are:

NorthPoint Communications, Inc.  
303 Second Street, South Tower  
San Francisco, CA 94107  
Telephone: (415) 403-4003

Bell Atlantic Corporation (d/b/a Verizon Communications)  
1095 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 395-2121

(b) NorthPoint Communications is a corporation organized under the laws of the State of California. Bell Atlantic Corporation (d/b/a Verizon Communications) is a corporation organized under the laws of the State of New York.

(c) Correspondence concerning this application should be sent to:

Michael Olsen, Esq.  
NorthPoint Communications, Inc.  
303 Second Street, 9th Floor  
San Francisco, CA 94107  
Telephone: (415) 365-6013

Karen Zacharia, Esq.  
Verizon Communications  
1320 North Courthouse Road, 8th Floor  
Arlington, VA 22201  
Telephone: (703) 974-4865

In accordance with the provisions of Sections 1.2001-1.2003 of the Commission's Rules (47 C.F.R. § 1.2201-1.2003), the undersigned certifies that no party to this application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. *See* 21 U.S.C. § 853(a).

## VII. CONCLUSION.

For all the foregoing reasons, the Commission should grant the requested license transfer expeditiously.

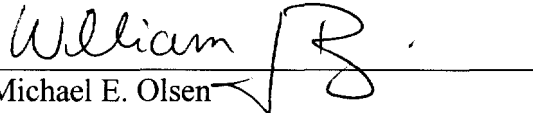
Respectfully submitted,



Michael E. Glover  
Karen Zacharia  
Verizon Communications  
1320 North Court House Road  
8<sup>th</sup> Floor  
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Ruth Milkman  
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(202) 777-7700

*Counsel for NorthPoint Communications, Inc.*



## PUBLIC INTEREST STATEMENT

### **I. INTRODUCTION.**

The combination of the xDSL businesses of NorthPoint and Verizon in a new “most separate” affiliate is strongly in the public interest. It simultaneously advances two core goals of the Telecommunications Act of 1996 — promoting competition in all segments of the communications marketplace, and promoting the rapid deployment of advanced telecommunications capability.

*First*, this transaction will speed the deployment of broadband access nationwide, and, by doing so, create a nationwide open platform to challenge the closed cable systems that today control approximately three-quarters of the residential broadband access business.

NorthPoint and Verizon are both new entrants into the broadband access business. They have focused on providing different services for different customer segments using different technologies. Combining their complementary operations into a new separate affiliate will allow the new company to roll out broadband access services aggressively to both business and residence customers and to do so across the new company’s larger national footprint, including by competing in the service territories of the other regional Bell companies. This combination of capabilities and scale will help the new company compete effectively against the cable and telephone incumbents, benefiting consumers and Internet service providers alike, who for the first time will have an effective national distribution alternative to the closed cable systems that dominate the provision of broadband access today.

*Second*, this transaction will provide the added scale needed to compete with the cable incumbents in their core video business. The Commission recently found that video markets remain highly concentrated and that cable rates continue to rise faster than the rate of inflation. NorthPoint has developed an innovative new technology platform and network — known as

“Blast!” — that is now capable of delivering streaming video programming over DSL in direct competition with the unregulated premium and pay-per-view cable services. But NorthPoint alone lacks the scale to attract the new sources of content it needs to compete with cable’s programming services — a scale that the combined new company will be able to achieve far more quickly than either company could alone.

*Third*, the transaction will create a “most separate” affiliate. The new NorthPoint will be more independent from Verizon than necessary to fulfill any regulatory requirement. This separate affiliate will help accelerate broadband deployment by providing added assurance that all competing DSL providers receive non-discriminatory treatment. Moreover, it will give both regulators and competitors valuable “benchmarking” information, which the Commission has found to be a valuable tool in implementing the pro-competitive mandates of the 1996 Act.

*Finally*, this combination creates no realistic risk of any countervailing competitive harm. Quite the contrary, NorthPoint and Verizon are merely two among many new entrants in the broadband access business. For residential customers particularly, there are dominant incumbents, but they are neither NorthPoint nor Verizon: they are the cable companies. In addition to cable, more than *two dozen* firms have entered to provide facilities-based advanced services in Verizon’s service areas, and *97 percent* of the central offices where both NorthPoint and Verizon operate contain two or more additional facilities-based DSL competitors. In short, NorthPoint and Verizon cannot plausibly be said to be among a limited number of most significant market participants, and their combination readily passes muster under the Commission’s established standard.



## **II. THE COMBINATION OF NORTHPOINT'S AND VERIZON'S COMPLEMENTARY DSL BUSINESSES IS STRONGLY IN THE PUBLIC INTEREST.**

NorthPoint and Verizon are new entrants into the broadband access business with complementary operations and services. NorthPoint has focused primarily on providing services for small- and mid-sized business customers using Symmetric DSL (“SDSL”) technology. Verizon, on the other hand, has focused primarily on providing service to residence customers using Asymmetric DSL (“ADSL”) technology. Combining their respective operations into a new “most separate” affiliate will allow the new company to roll out high-speed access services aggressively across the new company’s larger national footprint, including in the service territories of the other regional Bell companies, and will provide the combination of capabilities and scale needed to compete effectively with the dominant cable incumbents.

### **A. The Combination Will Promote Competition to the Closed Cable Systems That Dominate the Broadband Access Business.**

Today, closed cable systems — which compete directly with the open DSL technologies employed by NorthPoint and Verizon — are the dominant incumbents in the provision of broadband access, with control over approximately *three-quarters* of the residential broadband access business. *See* Hazlett Decl. ¶ 7 & Att. 3.<sup>1</sup> The two largest cable modem providers — AT&T’s Excite@Home and Time Warner’s Road Runner — each have more than *four times* the number of residential subscribers as NorthPoint and Verizon *combined*. *See* Hazlett Decl. Att. 3.

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<sup>1</sup>*See also* FCC, *Deployment of Advanced Telecommunications Capability: Second Report* ¶¶ 71, 72, CC Docket No. 98-146 (rel. Aug. 2000) (“*Second Advanced Services Report*”) (as of December 31, 1999, cable had 87.5% of all residential “advanced services” subscribers and 78% of all residential “high-speed” subscribers); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., to AT&T Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 9816, ¶ 106 (2000) (“*AT&T/MediaOne Order*”) (noting approximately 2 million cable modem subscribers as of April 2000 compared to 340,000 DSL subscribers as of year-end 1999).

Cable operators not only have a substantial lead over DSL and all other broadband technologies in terms of actual subscribers, but also in the deployment of their networks. As of July 2000, cable operators were providing broadband access service to residential customers served by at least 44 percent of the central offices in which both NorthPoint and Verizon have DSL facilities. *See id.* ¶ 27. Cable operators are rapidly upgrading their networks, however. According to the Commission, by the end of 2000 the largest cable companies “will have upgraded systems that cover at least 61 million (80%) households.”<sup>2</sup> In light of cable’s huge lead, respected analysts expect cable to maintain a substantial lead over DSL for at least the next two to four years.<sup>3</sup> The Commission itself has stated its expectation that cable will maintain its lead over DSL until at least 2007.<sup>4</sup>

This transaction will promote competition against cable by enabling the new NorthPoint to deploy broadband access services more expeditiously, and over a larger geographic footprint, than NorthPoint and Verizon would on their own.

1. From NorthPoint’s perspective, this transaction provides the key ingredients the company needs to expand its business and challenge cable’s dominance in the provision of broadband access.

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<sup>2</sup>D. Lathen, Bureau Chief, Cable Services Bureau, *Broadband Today*, A Staff Report to William E. Kennard, Chairman, Federal Communications Commission, on Industry Monitoring Sessions Convened by Cable Services Bureau at 27 (Oct. 1999) (“*Broadband Today*”).

<sup>3</sup>*See, e.g.*, Bear Stearns, *Cable TV & Broadband* at 57, Ex. 15 (Apr. 2000) (predicting 12.7 million cable modem customers in 2004 compared to 9.5 million DSL customers); Sanford C. Bernstein & Co., Inc. and McKinsey & Co., Inc., *Broadband!* at 44, Ex. 20 (Jan. 2000) (“[w]e expect that cable’s initial lead and higher installed base combined with its closer and more natural tie to television will likely mean the persistence of the cable market-share lead over DSL into the 2004 time frame”).

<sup>4</sup>*See Broadband Today* at 27 & App. B, Chart 2.

*First*, the transaction provides NorthPoint with added capital and other resources that it badly needs but currently lacks in order to sustain its current operations, and to expand these operations into new customer segments and geographic areas. Verizon will make a net cash investment of \$450 million in the new NorthPoint. It is particularly critical that NorthPoint obtain this capital immediately, because cable operators already have a commanding lead in deploying broadband networks and attracting broadband subscribers, and if permitted to extend this lead could “tip” nascent broadband markets irretrievably in their favor. *See* Hazlett Decl. ¶¶ 8, 10.

*Second*, the transaction enables NorthPoint to expand its product offerings to provide broadband access services to residential customers. While NorthPoint historically has focused on providing Symmetric DSL services for business customers, Verizon has focused on providing Asymmetric DSL services to residence customers.<sup>5</sup> ADSL and SDSL use different technologies and perform different functions. *See* Hazlett Decl. ¶ 4 & n.1. By combining their complementary assets, however, the new NorthPoint will be able to serve both the business and residence customer segments.

2. From Verizon’s perspective, this transaction is the logical next step in its broader effort to become a nationwide competitor capable of providing a full range of services, and will jump start its separate data affiliate.

*First*, the transaction provides Verizon with a nationwide broadband presence that it does not have. The transaction will give Verizon an immediate and extensive out-of-region presence, including access to approximately 1,000 central offices in the largest markets outside of its local

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<sup>5</sup>The new NorthPoint will get from Verizon its ADSL assets, including facilities that serve approximately 1,700 central offices in 84 MSAs.

exchange territory, where it will compete with the other regional Bell companies.<sup>6</sup> The transaction also allows Verizon to broaden its product offerings to add services for small- and medium-sized businesses, providing wholesale service through NorthPoint and retail services through other Verizon companies that can market services from the new NorthPoint. This expansion is the logical next step in Verizon's broader effort to become a nationwide competitor for the full suite of services necessary to compete against the likes of AT&T/TCI/Media One/Excite@Home, AOL/Time Warner/Road Runner, WorldCom, Sprint, and SBC, and an important complement to Verizon's nationwide wireless venture and its long-term plans to develop a national long-distance business.

*Second*, the transaction provides a jump start to Verizon's separate data affiliate by infusing it with the added technical capabilities and entrepreneurial management team of the current NorthPoint. For example, NorthPoint specializes in designing and operating DSL networks and has developed an operations support system — OSS2000 — that is specifically designed to meet the demands of DSL customers. Moreover, NorthPoint's entire work force and management team are devoted to providing DSL service, which enables the company to concentrate all of its energies on meeting the competitive challenges in this dynamic industry segment. This combination of added capabilities and greater focus will allow the new data affiliate to aggressively roll out competitive services nationwide by employing the same business model that already has allowed Verizon to build a highly competitive nationwide wireless business.

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<sup>6</sup>By end of year 2000, NorthPoint will have collocation arrangements in more than 150 BellSouth central offices, 190 Qwest central offices, and 640 SBC central offices. It also operates in Cincinnati Bell service areas, and in Sprint service areas in Las Vegas and Orlando.

3. The combination of NorthPoint's and Verizon's DSL businesses will accelerate the deployment of advanced services and promote increased competition. The new NorthPoint will have the full range of products, geographic reach, and scale it needs to deploy DSL facilities efficiently throughout the country, and to all customer segments. This will enable the new company to mount a successful challenge to dominant cable operators, which already possess vast broadband networks and enormous scale. *See* Hazlett Decl. ¶ 7. For example, the nation's largest cable modem provider, AT&T's Excite@Home, has nearly 15 times the number of subscribers as the current NorthPoint, and the second largest cable modem provider, Time Warner's Road Runner, has nearly 10 times the number of subscribers as the current NorthPoint.<sup>7</sup> And, through their exclusive contracts with cable operators, both Excite@Home (which has contracts to pass approximately 57 million homes) and Road Runner (which has contracts to pass more than 30 million), *see* Hazlett Decl. ¶ 7, have access to far more potential customers than NorthPoint.

Moreover, the new NorthPoint will employ an open network platform that provides ISPs with the ability to compete against the closed systems of the dominant cable incumbents. NorthPoint and Verizon provide access to their DSL facilities through open broadband access platforms that are used by literally hundreds of Internet service providers. As a result of the transaction, the two companies' DSL operations will become part of a single open platform, making it available to broader geographic areas and customer segments than either company alone presently serves. This will provide ISPs with a more efficient means to attain a nationwide footprint and to obtain access to the consumer market. *See id.* ¶¶ 2, 6.

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<sup>7</sup>*See* Hazlett Decl. Att. 3; NorthPoint Press Release, *NorthPoint Reports Second-Quarter Results* (Aug. 8, 2000) (62,000 subscribers as of 2Q2000).

ISPs need the open DSL platform that the new company will provide in order to compete against cable. *See id.* ¶ 13. Cable operators have closed their networks; ISPs have not been permitted to provide broadband access services to cable subscribers. *See id.* ¶¶ 9, 12. Most cable operators have signed exclusive contracts with one of the two dominant cable Internet access providers —Excite@Home or Road Runner — to provide Internet access on their cable systems. These exclusive contracts are not scheduled to expire for 18-24 more months,<sup>8</sup> and cable operators could maintain closed platforms even after that time if not required to do otherwise.<sup>9</sup> The open network alternative provided by the new company, however, will put added competitive pressure on the cable incumbents to provide greater access to their own closed networks. *See Hazlett Decl.* ¶¶ 12-14.

**B. The Transaction Will Promote Competition with Cable Incumbents in Their Core Video Business.**

As the Commission recently found, “[c]able television still is the dominant technology for delivery of video programming to consumers in the MVPD marketplace,”<sup>10</sup> and cable rates are still rising faster than inflation.<sup>11</sup> This transaction will enable the new NorthPoint to become

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<sup>8</sup>*See AT&T/MediaOne Order* ¶ 120.

<sup>9</sup>Although Chairman Kennard has announced a proposal “that the FCC begin a formal proceeding on the issue of multiple Internet service providers gaining access to a cable company’s platform,” he has stated that his preference is to leave this issue to “market forces” rather than regulation — a policy that has to date resulted in closed access to cable networks. FCC News Release, *FCC Chairman To Launch Proceeding on “Cable Access”* (Jun. 30, 2000).

<sup>10</sup>*Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Sixth Annual Report, 15 FCC Rcd 978, ¶ 5 (2000) (“*Sixth Annual Video Report*”); *see also id.* ¶ 140 (“The market for the delivery of video programming to households continues to be highly concentrated.”).

<sup>11</sup>The FCC recently found that cable rates have increased 4.6 percent in overbuild areas, and 5.8 percent in noncompetitive systems. *See Implementation of Section 3 of the Cable Television Protection and Competition Act of 1992*, Report on Cable Industry Prices ¶ 4, MM Docket No. 92-266 (rel. Jun. 15, 2000).

a true competitor to cable-delivered video, by accelerating the development and deployment of NorthPoint's unique streaming video technology, and giving the company the scale necessary to attract the most sought after video content providers on competitive terms.

NorthPoint has developed an innovative new technology platform and network — known as “Blast!” — that is now capable of delivering streaming video programming over DSL in direct competition with cable video programming, particularly unregulated premium and pay-per-view cable services. As the Commission itself has recognized, streaming video is capable of competing directly with unregulated cable services such as pay-per-view and premium channels, and eventually may be capable of competing with cable services more broadly.<sup>12</sup> Indeed, cable operators have already recognized that streaming video is a threat, which explains why they have imposed limits on the use of streaming video over their networks. *See* Hazlett Decl. ¶ 9.

The transaction will provide NorthPoint with capital and other resources it needs to deploy its Blast! network more aggressively, and to continue to develop its streaming-video technology as a full competitor to cable. *See id.* ¶¶ 14, 16. NorthPoint's Blast! network consists of numerous local nodes that store and deliver broadband-video content, thereby eliminating the delays that could occur at higher levels of the Internet that reduce the quality of streaming video. As a result of this transaction, NorthPoint will be able to deploy local nodes more rapidly and to

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<sup>12</sup>*See, e.g., Sixth Annual Video Report* ¶¶ 15, 116 (noting that, although Internet video is not yet “a direct competitor to traditional video services,” there are “[m]edia companies [that] continue to offer increasing amounts of video over their Web sites in the expectation that the pictures will be acceptable for the intended use or eventually improve to broadcasting or VCR quality”); B. Esbin, Office of Plans and Policy, FCC, *Internet Over Cable: Defining the Future in Terms of the Past* at 83, OPP Working Paper No. 30 (Aug. 1998) (“live video images transmitted across the Internet by the technique known as ‘streaming’ video might appear much closer to traditional broadcasting, particularly from the point of view of the subscriber”); K. Werbach, Office of Plans and Policy, FCC, *Digital Tornado: The Internet and*

a larger area than NorthPoint would have been able to on its own. Moreover, it will have additional resources necessary to continue the research and development for improving its video-streaming technology.

Just as critically, this transaction will help the new NorthPoint to achieve the scale necessary to attract new forms of content that are needed to compete with cable. *See* Hazlett Decl. ¶¶ 16-17. The Commission has recognized that the provision of video programming to households involves “substantial barriers to entry.”<sup>13</sup> In particular, the “market for the purchase of video programming by MVPDs is regional and national in nature,” and therefore “larger [cable operators] have significant bargaining power, especially vis-a-vis startup programming networks that need to reach a certain critical level of subscribership quickly to maintain their viability.”<sup>14</sup> This transaction will give the new NorthPoint the necessary scale to allow creation of a viable video delivery business more quickly than either NorthPoint or Verizon would have attained on their own.

While the precise scale necessary to attract content cannot be measured directly, experience in the cable industry suggests that a video distributor may need a minimum of three to six million subscribers — and potentially more — to attract content on competitive terms. That is the size of the smallest second-tier cable operators.<sup>15</sup> These are the cable operators that programmers must turn to when they cannot secure access to AT&T’s and Time Warner’s cable networks in order to reach the 15-20 million subscribers that programmers need to operate a

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*Telecommunications Policy* at 1, OPP Working Paper No. 29 (Mar. 1997) (Internet service is a substitute “for all existing media,” including broadcasting).

<sup>13</sup>*Sixth Annual Video Report* ¶ 140.

<sup>14</sup>*Id.* ¶ 177.

<sup>15</sup>*See* NCTA, *The Cable Industry at a Glance, Top 50 MSOs*, [www.ncta.com/glance.html](http://www.ncta.com/glance.html).



viable video programming business. *See* Hazlett Decl. ¶ 18.<sup>16</sup> This transaction will enable the new NorthPoint to reach the three-million level within two years, which neither company alone would do. Moreover, this transaction provides NorthPoint with the capabilities needed to serve residential customers, which are the most likely users of Blast!, providing an audience for innovative new sources of content.

**C. The Transaction Will Create a “Most Separate” Affiliate That Will Promote Competition for Broadband Access, and Provide a Valuable “Benchmark” To Monitor Broadband Access Competition.**

NorthPoint and Verizon will combine their xDSL businesses in a new “most separate” affiliate. The new NorthPoint will be more independent from Verizon than necessary to meet any regulatory requirement. Moreover, the formation of the new most separate affiliate will provide a valuable benchmark for the Commission and competitors to monitor the development of broadband access competition across the country.

The new NorthPoint will be more separate than the data affiliates previously endorsed by the Commission in several key respects. First, the new NorthPoint will have substantial independent ownership. Verizon will own 55 percent of the new NorthPoint, with the remaining 45 percent held by shareholders that are independent of Verizon. Second, these independent shareholders will be represented on the board of directors. NorthPoint’s shareholders will appoint three of nine directors, and three of the six directors that Verizon will nominate must be NASDAQ-qualified “independent” directors. Third, the new NorthPoint will have a management team led by the current NorthPoint. NorthPoint’s current CEO will remain in

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<sup>16</sup>*See also Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992; Horizontal Ownership Limits*, Third Report And Order, 14 FCC Rcd 19098, ¶ 42 (1999) (“[F]or purposes of this analysis, we will assume that a new programmer needs 15 million subscribers in order to have a reasonable chance to achieve economic viability.”).

charge of the new company. Finally, the new company will maintain the NorthPoint identity, retaining the “NorthPoint” name and brand and maintaining its headquarters in San Francisco.

The Commission previously has found that the provision of advanced services by an incumbent LEC through a separate affiliate “will greatly accelerate competition in the advanced services market by lowering the costs and risks of entry and reducing uncertainty, while prodding all carriers, including [incumbent LECs], to hasten deployment.” *Bell Atlantic/GTE Order* ¶ 262.<sup>17</sup> By accelerating competition and broadband deployment, the Commission found, consumers “will ultimately benefit.” *Id.* Moreover, the existence of a separate affiliate “makes engaging in anticompetitive misconduct more difficult,” *id.* ¶ 260, and therefore acts as a “competitive safeguard[]” that provides “competitors substantial benefits,” *id.* ¶ 261, by “ensur[ing] that they receive [from the incumbent] the same treatment as the separate affiliate,” *id.* ¶ 262. As a result of this transaction, Verizon will provide advanced services through a separate affiliate that is even more separate than what the Commission has previously endorsed, providing still added assurance that these benefits for competitors and consumers will materialize.

In addition to accelerating broadband deployment, the creation of the new most separate affiliate will enhance the Commission’s ability to monitor the development of broadband competition through regulatory “benchmarking,” which the Commission has found is an important tool “in implementing the pro-competitive mandates of the 1996 Act.” *Id.* ¶ 133. First, Verizon’s performance in providing services and facilities to NorthPoint will provide a valuable benchmark for use in evaluating Verizon’s performance in providing the same services

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<sup>17</sup> *Application of GTE Corporation and Bell Atlantic Corporation, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, Memorandum Opinion and Order, CC Docket No. 98-184 (rel. Jun. 16, 2000) (“Bell Atlantic/GTE Order”).*

and facilities to competing data service providers. *See, e.g., SBC/Ameritech Order* ¶ 466.<sup>18</sup>

Second, NorthPoint's conduct in dealing with other local telephone incumbents outside of Verizon's region provides an additional benchmark to evaluate the reasonableness of Verizon's conduct in its own local service areas. *See id.* ¶ 388.<sup>19</sup>

### **III. THE TRANSACTION WILL NOT ADVERSELY AFFECT COMPETITION.**

As described above, the proposed alliance between NorthPoint and Verizon will produce enormous public interest benefits. In addition, this transaction — which combines two new entrants in the nascent advanced services business that have largely been addressing different customers with different services — will have no countervailing adverse effect on competition. As new entrants into the broadband access business, NorthPoint and Verizon face intense competition. As the Commission itself has recognized, incumbent cable operators are the dominant providers of these services, with extensive facilities already in place and with a wide lead over all other competitors. *See supra* n.1. There are also dozens of additional actual and potential providers of facilities-based advanced services in Verizon's region. They include a myriad of established and new data CLECs, traditional CLECs that have begun providing facilities-based DSL services, the three largest long-distance carriers, incumbent LECs such as SBC and Qwest, fixed wireless providers, and satellite operators.<sup>20</sup> Quite simply, neither Verizon nor NorthPoint is, by any stretch, “among a small number of most significant market

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<sup>18</sup>*Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control*, Memorandum Opinion and Order, 14 FCC Rcd 14712 (1999) (“*SBC/Ameritech Order*”).

<sup>19</sup>*See also Bell Atlantic/GTE Order* ¶ 300 (requiring Verizon to offer CLECs within its region “any interconnection arrangement or UNE” that Verizon “as a competitive LEC outside of its incumbent service area,” secures from another ILEC).

<sup>20</sup>*Cf. AT&T/MediaOne Order* ¶ 106 (“There are several different technological means by which consumers may obtain broadband (high-speed) access to the Internet.”).

participants” in the provision of advanced services. *Bell Atlantic/GTE Order* ¶ 98. Accordingly, there is no plausible scenario under which this transaction would “result in a potential harm to the public interest by diminishing the potential for competition.” *Id.* ¶ 99.<sup>21</sup>

**A. Since the Provision of Advanced Services Is Intensely Competitive, the Removal of Either NorthPoint or Verizon as Potential Competitors Will Have No Adverse Effects.**

As noted above, NorthPoint and Verizon historically have focused on providing different services using different technologies to different customer segments. *See supra* pp. 3, 5. Nonetheless, even if these two companies would have competed with one another had they decided to go it alone, this combination does not create any meaningful risk of lost competition. Under the Commission’s “transitional market framework,” a merger will not be deemed to have adverse competitive effects unless “either or both of the merging parties are among a small number of . . . most significant market participants,” which is defined to include “not only firms that already dominate transitional markets, but also those that are most likely to enter in the near future, in an effective manner, and on a large scale.” *Bell Atlantic/GTE Order* ¶ 98.<sup>22</sup> This

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<sup>21</sup>Even were the Commission persuaded that this merger would have some adverse effects, it would have to weigh these effects against the competitive benefits of the merger. The critical inquiry, therefore, is not whether the merger would result in *any* theoretical loss of potential competition, but instead whether “the transaction *on balance* serves the public interest, convenience and necessity.” *Applications of NYNEX Corp. and Bell Atlantic Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 19985, ¶ 157 (1997) (“*Bell Atlantic/NYNEX Order*”) (emphasis added). This transaction readily satisfies this standard. As explained above, the transaction offers significant benefits, and viewed in light of the enormous degree of competition in the provision of advanced services, the elimination of NorthPoint or Verizon as a potential competitor clearly does not provide a grounds for finding that this transaction, on balance, would not serve the public interest.

<sup>22</sup>While the Applicants include here a demonstration that this transaction will not harm competition in any segment of the communications marketplace, it is Verizon’s view that the Commission’s authority under the Communications Act is limited to assessing the interstate uses of the licenses for which transfer authority is sought, and that the Commission does not have authority to review this particular merger under section 7 of the Clayton Act because there “there

transaction easily meets this established standard. NorthPoint and Verizon are not “among a small number of most significant market participants,” but rather two companies among dozens of actual and potential competitors.

The Commission has not formally defined a market for residential broadband service. It has on some occasions, however, separately analyzed broadband competition for residential consumers.<sup>23</sup> Whether the Commission looks separately at residential broadband competition, or evaluates broadband residential and business broadband competition as a whole, does not matter in this case. As described above, cable operators are dominant in the provision of broadband services to residence customers, with control over approximately *three-quarters* of the residential broadband access business. *See supra* pp. 3-4; Hazlett Decl. Att. 3.<sup>24</sup> There are also, as described below, a number of other actual or potential providers of broadband services to residence customers. Moreover, in the provision of broadband services to small- and medium-sized business customers, there are quite literally dozens of carriers already providing advanced services in Verizon’s region, and many more that are likely to do so “in the near future, in an effective manner, and on a large scale.” *Bell Atlantic/GTE Order* ¶ 98.

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is no substantial competition between” the merging parties. *See Navajo Terminals, Inc. v. United States*, 620 F.2d 594, 601 (7th Cir. 1979).

<sup>23</sup>*See, e.g., AT&T/MediaOne Order* ¶¶ 106-109; *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Report, 14 FCC Rcd 2398, ¶¶ 27-33 (1999) (“1999 Advanced Services Report”) (analyzing “deployment of broadband to the consumer market”); *Second Advanced Services Report* ¶¶ 65-72 (analyzing deployment of high-speed and advanced services to “residential customers”).

<sup>24</sup>In some its largest markets — including New York City and Boston — Verizon already faces competition from two cable operators providing broadband access in the same geographic area (the incumbent, and overbuilder RCN). *See* RCN, General Cable Modem FAQ, [http://www.rcn.com/support/cable\\_modem/faq/general/index.html](http://www.rcn.com/support/cable_modem/faq/general/index.html).

Data CLECs. In Verizon's region, there are more than two dozen data CLECs that have deployed DSL facilities, or are in the process of doing so. *See* Hazlett Decl. ¶ 25. These data CLECs have obtained, or are in the process of obtaining, thousands of collocation arrangements throughout Verizon's region, a very large percentage of which are in the very same locations where both NorthPoint and Verizon provide service. For example, *a conservatively calculated 97 percent of the central offices where NorthPoint and Verizon both provide service contain two or more other facilities-based DSL competitors (in addition to the incumbent cable operator); and approximately 90 percent contain three or more.* *See id.* ¶ 26 & Att. 2.<sup>25</sup>

Moreover, new data CLECs have rapidly entered Verizon's region, proving that entry barriers are low.<sup>26</sup> In the last twelve months alone, at least 20 carriers that focus on providing DSL services have begun operating in Verizon's region, or have announced plans to do so.<sup>27</sup> These competitors plan to deploy their services in numerous major markets, and will be able to do so quickly. First, DSL equipment can be purchased off the shelf, at a relatively low cost, and can be used efficiently even by carriers that have not yet achieved large scale and scope

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<sup>25</sup>This analysis understates the competition for DSL service for at least two reasons. First, it does not include "traditional" CLECs with collocation that may have deployed equipment to provide DSL service. *See* Hazlett Decl. ¶ 28. Second, it does not account for the fact that a large percentage of DSL end-user customers are concentrated in a much smaller number of central offices, and within this small number of central offices an even greater number of competitors provide service.

<sup>26</sup>*See, e.g., United States v. Baker Hughes, Inc.*, 908 F.2d 981, 987 (D.C. Cir. 1990); *Oahu Gas Serv. v. Pacific Resources, Inc.*, 838 F.2d 360, 366 (9th Cir. 1988); *United States v. Waste Mgmt., Inc.*, 743 F.2d 976, 981-83 (2d Cir. 1984); *1992 Horizontal Merger Guidelines* § 3.0.

<sup>27</sup>According to their Web sites, the following companies have begun providing, or have announced plans to provide, DSL service somewhere in Verizon's region since June 1999: TDS Metrocom, Jato, Choice One, Conversent, Primary Network, Mpower, Conectiv, ProSpeed.net, New Edge Networks, Broadview Networks, Picus, Arrival, NewSouth, Maverix.net, IP Communications, Transbeam, Edge Connections, Vectris, ConnectSouth, and LightNetworks.

economies.<sup>28</sup> Second, competitors can readily obtain collocation and unbundled network elements at cost-based rates and can use cageless forms of collocation and line sharing to enter with minimal sunk investment.<sup>29</sup> Third, new facilities-based DSL providers can form partnerships with ISPs and avoid the costs of developing a large sales and marketing organization.<sup>30</sup>

Traditional CLECs. Many CLECs that in the past have focused on providing traditional voice and data services have begun deploying facilities to provide DSL services as well. For example, within Verizon's region, CLECs such as Allegiance, Intermedia, McLeodUSA, and KMC Telecom have begun deploying their own DSL facilities. *See* Hazlett Decl. ¶ 28. These CLECs claim advantages over data CLECs because, as Allegiance CEO Royce Holland explains, they can be "a full-service provider of retail services to small and medium-sized businesses, including packages of local, long-distance, data transmission, Internet access, web hosting."<sup>31</sup> There are also numerous CLECs in Verizon's region that resell DSL services — including Level 3 and ICG. These carriers can bundle resold DSL with other facilities-based offerings, and

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<sup>28</sup>*See, e.g., Implementation of the Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 308 (1999) (finding that "equipment needed to provide advanced services, such as DSLAMs and packet switches, are available on the open market at comparable prices to incumbents and requesting carriers alike").

<sup>29</sup>*See, e.g., id.* ¶ 307 (finding that widespread deployment of DSL "suggest[s] that requesting carriers have been able to secure the necessary inputs to provide advanced services to end users in accordance with their business plans"); *see also Second Advanced Services Report* ¶ 196 ("The availability of unbundled network elements and line sharing has spurred tremendous investment in DSL deployment").

<sup>30</sup>*See, e.g., R. Krause, Covad Sees DSL Service as Its Opening to Internet*, Investor's Business Daily at A6 (Sept. 24, 1999) (quoting Covad CEO Robert Knowling: "We want to leverage the sales force of a number of partners vs. putting those feet on the street ourselves.").

<sup>31</sup>J. Bartash, *Allegiance Chief's Plans to Succeed*, CBS MarketWatch (Oct. 2, 1999) (interview with Allegiance CEO Royce Holland).

differentiate themselves in providing customer care and support services. The Commission has repeatedly found that resellers such as these provide added competitive discipline.<sup>32</sup>

The Big Three Interexchange Carriers. The Commission has found that “the three largest interexchange carriers — AT&T, MCI WorldCom, and Sprint — are among the most significant participants in the mass market for local exchange and exchange access services,” *Bell Atlantic/GTE Order* ¶ 118, a category of services that the Commission has found to include DSL, *see Order on Remand* ¶ 3.<sup>33</sup> Each of the big three long distance carriers has indeed announced plans to begin competing extensively in the provision of DSL services, *see Hazlett Decl.* ¶ 29, and each already has extensive collocation arrangements throughout Verizon’s region. AT&T recently announced that it “has accelerated the market roll-out of its Digital Subscriber Line (DSL) Internet service,” in order to “reinforce[] its position as the premiere provider for businesses seeking a nationwide, single-vendor broadband solution.”<sup>34</sup> Sprint states that “DSL is one of the cornerstone technologies for enabling Sprint ION nationwide,”<sup>35</sup> and that its “introduction of Sprint High Speed DSL and [its] associated partnerships with leading broadband

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<sup>32</sup>*See, e.g., Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3217, ¶ 61 (1995) (resellers can “put downward pressure on price”); Remarks of FCC Chairman William Kennard, before the Practising Law Institute, Washington, DC, Dec. 11, 1997 (“Resale enables competitors [in the local residential market] to obtain market presence, and begin to achieve brand name recognition. They can begin to provide service to consumers before they invest in network infrastructure.”).

<sup>33</sup>*Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Remand, 15 FCC Rcd 385 (1999).

<sup>34</sup>AT&T Press Release, *AT&T Accelerates Deployment of Broadband Business Service* (Jul. 26, 2000); *see also id.* (“Business DSL Internet service is available today in nearly 100 markets throughout the United States,” and AT&T has “expanded our DSL service roughly twice as fast as originally planned.”).

<sup>35</sup>*Sprint EarthLink DSL Delivers Broadband Solutions for Charlottesville Businesses and Consumers*, PR Newswire (Aug. 31, 1999); *Sprint to Offer Nation’s First Integrated Communications Services for the Home*, PR Newswire (Jun. 21, 1999).



multimedia content providers truly set [it] apart from other companies vying to become players in the fast connection marketplace.”<sup>36</sup> WorldCom claims to play a “leadership-role in providing nationwide DSL access.”<sup>37</sup>

Incumbent LECs. Two of the largest incumbent local exchange carriers — SBC and Qwest — already have plans to provide DSL services within Verizon’s territory. SBC plans to begin providing DSL services in 11 major Verizon markets, starting with Boston in the fall of 2000, followed by New York City, Baltimore, Philadelphia, and the District of Columbia by the end of the year. *See Hazlett Decl. ¶ 30.* SBC has invested in Network Access Solutions “to provide DSL service for SBC out of region, thereby enabling SBC Telecom to accelerate the rollout of services associated with its national-local expansion into 30 new markets.”<sup>38</sup> Qwest, which announced plans to “build [DSL] out of region” since acquiring US West,<sup>39</sup> intends to provide DSL services to small- and medium-sized business customers in 25 major markets, and has already begun providing service in five major markets in Verizon’s territory. *See Hazlett Decl. ¶ 30.*

Fixed Terrestrial Wireless. The Commission has recognized that LMDS operators already “offer a variety of broadband services to small and medium-sized businesses in several

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<sup>36</sup>*Sprint Advances Broadband Content Strategy with Florida Launch, Addition of Two New Providers*, PR Newswire (Oct. 19, 1999).

<sup>37</sup>*MCI WorldCom DSL Deployment Reaches Milestone Mark of 1,000 Points of Presence*, M2 Presswire (July 14, 1999).

<sup>38</sup>SBC News Release, *SBC, Telmex & NAS Partner To Provide DSL Nationally* (Feb. 10, 2000).

<sup>39</sup>A. Backover, *U S West Boldly Enters ‘Foreign’ Realm Smallest Baby Bell to Battle Industry Giant SBC on its Turf in Four California Markets*, *The Denver Post* at C-01 (May 11, 2000).

metropolitan markets.”<sup>40</sup> Indeed, LMDS operators such as Teligent, Winstar, Nextlink, and Advanced Radio Telecom already provide service throughout Verizon’s region. *See Hazlett Decl.* ¶ 31. The Commission has also found that, “[i]n a significant number of cities,” MMDS companies are “offer[ing] broadband services to residential consumers,”<sup>41</sup> and it has cited estimates that “several million residential consumers could now obtain broadband from such companies.”<sup>42</sup> Sprint, WorldCom, and AT&T have all made substantial investments in fixed wireless technologies, have all begun deploying this service on a commercial basis, and have all announced plans rapidly to expand this service into Verizon’s region. *See Hazlett Decl.* ¶ 33. WorldCom recently announced that it was filing “its first round of applications for licensing authority to offer broadband fixed wireless services in more than 60 markets nationwide,” including many major markets within Verizon’s region.<sup>43</sup>

Satellite. The Commission has found that “[s]atellite-delivered broadband services . . . may become viable broadband alternatives in the future.”<sup>44</sup> Hughes has announced that, in the fourth quarter of 2000, it will begin providing two-way broadband capabilities for its high-speed satellite Internet service, DirecPC, which will have upstream speeds of between 128Kbps and 256Kbps, and downstream speeds of over 40Mbps. *See Hazlett Decl.* ¶ 32. In addition, there are several new broadband satellite systems that are expected to begin service in the 2002-03 time

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<sup>40</sup>*Broadband Today* at 29; *see also AT&T/MediaOne Order* ¶ 118.

<sup>41</sup>*1999 Advanced Services Report* ¶ 57.

<sup>42</sup>*Id.*

<sup>43</sup>WorldCom Press Release, *WorldCom Seeks Broadband Fixed Wireless Authority* (Aug. 14, 2000) (the cities within Verizon’s region that WorldCom will enter include Boston, Providence, Pittsburgh, Buffalo, and Norfolk, VA).

<sup>44</sup>*AT&T/MediaOne Order* ¶ 119.

frame (e.g., Spaceway and Teledesic), which the Commission has found “could directly compete against cable modem service, DSL, and fixed wireless in the residential broadband industry.”<sup>45</sup>

**B. The Transaction Reduces the Likelihood of Discrimination.**

The transaction raises none of the concerns regarding increased incentives and ability to discriminate that the Commission has identified in reviewing past mergers involving incumbent LECs. The transaction does not involve the horizontal expansion of Verizon’s incumbent local exchange operations, nor does it involve further vertical integration of these operations with a service that relies on these operations for an essential input. In fact, as described above, by establishing a separate affiliate more independent than anything yet required or contemplated by regulators, the transaction will significantly decrease Verizon’s post-merger incentives to discriminate against other competitors that provide advanced services, and significantly increase the Commission’s ability to police against such discrimination.

Horizontal Issues. In reviewing previous mergers of incumbent LECs, the Commission has expressed concerns that an increase in an incumbent’s horizontal footprint might, in theory, increase its incentives to discriminate against other local competitors. *See, e.g., Bell Atlantic/GTE Order* ¶ 140; *SBC/Ameritech Order* ¶ 207. This transaction raises no similar concerns, because it does not increase the footprint of Verizon’s incumbent LEC operations. *See US West/Qwest Order* ¶ 41 (where merger “will not result in a larger footprint for the incumbent LEC, the merged entity does not face the same increased incentives to discriminate”);<sup>46</sup> *see also Bell Atlantic/GTE Order* ¶ 267 (in the provision of advanced services through a separate affiliate

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<sup>45</sup>*Broadband Today* at 22.

<sup>46</sup>*Qwest Communications International Inc. and US West, Inc., Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application*

Verizon is not an incumbent LEC). In short, whatever hypothetical incentives Verizon might have had to discriminate against other advanced services competitors will not increase as a result of this transaction. On the contrary, any such hypothetical incentives will only decline.

Following the transaction, Verizon will own a much smaller percentage of its DSL operations than it does today (55 percent instead of 100 percent), and therefore going forward would internalize a smaller fraction of any hypothetical discrimination.

Vertical Issues. This transaction, far from having any vertical effects that would increase Verizon's incentives or ability to discriminate, will have the opposite effect. The Commission has already found that providing advanced services through a separate affiliate "ameliorate[s]" any problem with respect to discrimination against competitive LECs. *US West/Qwest Order* ¶ 42. The existence of such affiliates make any discriminatory behavior "readily apparent to the Commission and the public." *Bell Atlantic/GTE Order* ¶ 260. As described in the preceding section, the separate affiliate that will emerge from this transaction is even more separate than what the Commission has deemed sufficient to allay concerns regarding discrimination. In addition to having a separate brand name, separate employees, separate directors, and separate accounts, the company that emerges from this combination also will have fiduciary duties to minority shareholders and independent directors who will have an interest only in maximizing the revenues of the new NorthPoint, and hundreds of unaffiliated ISP partners to satisfy.

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*to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 5376 (2000) ("*US West/Qwest Order*").